

subject matter. Claims 1-6, 17, 19, 22-33, 43-54, 65, 70-81, and 91-100 are subject to examination. No amendment is made in this Reply.

II. Double Patenting Rejections

The Examiner maintains the rejection of claims 1-6, 17, 19, 22-33, 43-54, 65, 70-81, and 91-100 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 44-146 of U.S. Patent No. 6,486,105 ("the '105 patent"). Office Action, page 2.

The Examiner further rejects claims 1-6, 17, 19, 22-33, 43-54, 65, 70-81, and 91-100 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 9-112 of U.S. Patent No. 6,800,302 ("the '302 patent"). *Id.* at page 3. The Examiner also provisionally rejects claims 1-6, 17, 19, 22-33, 43-54, 65, 70-81, and 91-100 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 57-85, 88-115, 117-135, and 138-165 of co-pending application No. 09/820,856. *Id.* The application No. 09/820,856 has been issued as the '302 patent.

Finally, the Examiner provisionally rejects claims 1-6, 17, 19, 22-33, 43-54, 65, 70-81, and 91-100 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 60-186 of co-pending application No. 09/820,934 ("the '934 application"). *Id.* at pages 3-4.

Applicants respectfully disagree. But, to further prosecution, Applicants have concurrently filed the enclosed Terminal Disclaimer over the '105 patent, the '302

patent, and the '934 application. Accordingly, in view of the Terminal Disclaimer, Applicants respectfully request that the double patenting rejections be withdrawn.

III. Withdrawal of Rejection under 35 U.S.C. § 103(a)

The Examiner has withdrawn the section 103(a) rejection of claims 1-6, 17, 19, 22-33, 43-54, 65, 70-81, and 91-100 over Karlen et al. (U.S. Patent No. 6,004,545) and Bertho et al. (U.S. Patent 5,688,930 or U.S. Patent No. 6,087,403). See Office Action, page 4. However, the Examiner states that "claims as amended, require the heating step be next in time, space or order of the application of the composition." *Id.*

Applicants respectfully submit that the Examiner's statement is incomplete. As indicated in the Amendment and Submission under 37 C.F.R. § 1.114 filed on April 27, 2005, page 16, "[i]n the interview on February 23, 2005, '[t]he Examiner noted that the claimed method comprises two steps, a) applying the composition to hair; and b) heating the hair. The two steps may take place at the same time (during) or step a) [occurs] prior to step b.]" Interview Summary, page 3. The Examiner further clarified that '[t]he current rejections applied to the later situation[, i.e., applying the composition to hair prior to heating the hair].' *Id.*"

Thus, the addition of the term "then" in, for example, claim 1 does not exclude the situation of applying the composition to hair and heating the hair at the same time (*i.e.*, during). The addition of the term "then" in, for example, claim 1 intends merely to indicate that there is no intervening step between the applying and the heating when applying the composition to hair is prior to heating the hair, as clearly stated in the

Amendment and Submission under 37 C.F.R. § 1.114 filed on April 27, 2005, pages 16-17.

IV. Conclusion

In view of the foregoing remarks, Applicants respectfully request reconsideration of this application, and timely allowance of the pending claims.

If the Examiner believes a telephone conference would be useful in resolving any outstanding issues, he is invited to call the undersigned Applicants' representative at (202) 408-4218.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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